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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/135,046	10/12/1993	RONALD V. GARVIN		9328

25943 7590 11/21/2003

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EXAMINER

CRANE, DANIEL C

ART UNIT PAPER NUMBER

3725

DATE MAILED: 11/21/2003

*30 restart*

Please find below and/or attached an Office communication concerning this application or proceeding.

*DS/296314*

# Office Action Summary

Application No.

08/135,046

Applicant(s)

GARVIN ET AL.

Examiner

Daniel C Crane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 8/12/96 & Judgment rendered 1/15/02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

**BACKGROUND**

This application is the parent of related applicants' Application Serial No. 08/435,144, a division of the present application. Applicants' Application Serial No. 08/435,144 is now ABANDONED. The invention of the present application is similar in inventive concept to that claimed in Application Serial No. 08/435,144.

During the initial prosecution of the present application, applicants became aware of Patent No. 5,345,744 having interfering subject matter to that claimed in the present application, particularly to apparatus claims indicated as allowable in this application (claims 7 and 8). Applicants withdrew consideration of the indicated allowable claims in the present application and presented the allowable claims in a divisional application, Serial No. 08/435,144, so as to the provoke an interference between the divisional application Serial No. 08/435,144 and Patent No. 5,345,744. Applicants were deemed to be the Junior party and the interfering patents were deemed to be the Senior party. Since method and apparatus claims remained in the present application and these remaining claims were similar to the claims in interference, prosecution was suspended in this application pending the outcome of the interference proceedings. A decision January 15, 2002 was rendered in the interference between the divisional application, Serial No. 08/435,144, and Patent No. 5,345,744 and Patent No. 5,426,910, a patent added during the interference proceedings. The interference decision was ADVERSE to applicants. Accordingly, applicants are not entitled to the subject matter of claim 1 in Patent No. 5,345,744 and Claims 1, 3 and 4 in Patent No. 5,426,910.

Claims 1-6 and 9 are still pending and are now up for consideration as a result of the Judgment determined in the Interference rendered on January 15, 2002 between applicants' divisional application, Serial No. 08/435,144 and the interfering patents 5,345,744 and 5,426,910.

#### **WITHDRAWAL**

In light of the Judgment of the interference rendered on January 15, 2002, the following action is herein made of record. The finality of the previous Office Action is withdrawn and the Amendment filed August 12, 1996, Paper No. 17, has been entered.

#### **REJECTION OF CLAIMS ON FORMAL MATTERS**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed invention is directed to an apparatus for filling a plastic bag with the apparatus including a mobile machine having a materials receiving tunnel, a delivery mechanism for delivering the materials to the tunnel while deploying a plastic bag as the materials are delivered to the tunnel and into the bag, a feed tube mounted to the tunnel to facilitate feeding of

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a conduit into the feed tube through an open end of the bag and into the bag and whereby the bag is treated by forcing a media through the conduit. The claimed combination presents an apparatus that includes all the features of the apparatus in conjunction with the mechanism to treat the materials within the bag. This combination is not shown in the original disclosure and by the implied arrangement of the combination; the claim specifies subject matter of a bag filling machine and a media-treating implement, which is not sufficiently detailed in the specification. Accordingly, new matter is being presented.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With reference to claim 6, the feature where the bag “is treated by forcing a media through the conduit and through the material in the bag followed by venting to the atmosphere” is an inferred limitation. Failure to positively set forth the features of this limitation renders the subject matter vague and the scope of the claim obscure. It is unclear whether this feature is a part of the apparatus or merely a feature that is separate from the apparatus connected only by post operations.

#### **REJECTION OF CLAIMS OVER PRIOR ART**

Claims 6 and 9 are rejected under 35 U.S.C. 102(a) as anticipated by Cullen (5,345,744) or Cullen (5,426,910). Cullen’s (‘744) claimed invention, as represented by claim 1, or Cullen’s

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(5,426,910) claimed invention, as represented by claims 1, 3 and 4, make known, prior to applicant's invention, an apparatus for filling a large plastic bag with material comprising a mobile machine ("wheeled frame means" of either Cullen patent) 10, 12 having a materials receiving tunnel ("tunnel means") 14, a delivery mechanism ("hopper means") 28 for delivering the materials to the tunnel while deploying a plastic bag as the materials are delivered to the tunnel and into the bag ("means associated at the intake end of said tunnel means for forcing the compost material into said tunnel means into said bag, and to move said wheeled frame means away from said fixed end of said bag"), a feed tube mounted to the tunnel to facilitate feeding of a conduit into the feed tube through an open end of the bag and into the bag ("means associated with the bagging machine for creating air channels in the compost material in said bag to enhance the composting of the compost material, said means for creating air channels comprising positioning means which positions at least one elongated, perforated pipe....") and whereby the apparatus is capable of functioning with a vented bag. A recitation of the intended use of the claimed apparatus must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, i.e., forcing media through the material and exhausting the media through vents in the bag, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). As to claim 9, note that the claimed "pipe means", by disclosure, includes additional pipes or conduits placed within the bag (see column 3, lines 24-27, of Cullen ('744) and column 3, lines 34-37, of Cullen ('910)).

Claims 1, 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cullen (5,345,744) or Cullen (5,426,910), either one further in view Meyer (5,269,829). The subject matter defined by claim 1 of Cullen teaches the basic claimed method, inherently, and the apparatus as claimed by applicants in claim 1 and claim 6, respectively, of the present invention. What is not taught by the claim, either inherently or literally, is the feature of venting the media through provided vents in the bag. This is a well recognized provision as taught by Meyer where the media can be forced through the perforations 22 of the conduit 16, into the bagged material and out the vents 24 so as to treat the bagged material. It would have been obvious to the skilled artisan at the time of the invention to have modified either one of Cullen's teachings by further providing vents within the bag so as to facilitate the distribution of the forced media within the material and exhausted therefrom. As to claim 9, it is the examiner's position that the skilled artisan having the benefit of the claimed invention of Cullen would have recognized that the number of conduits would be dictated by the amount of aeration desired. Meyer shows the use of multiple conduits inserted into the bag. Accordingly, providing more than one conduit within the bag of either one of Cullen's apparatus would have been obvious to the skilled artisan so as to accelerate the aeration of the material using the concepts taught by Meyer. Furthermore, note that the claimed "pipe means", by disclosure, includes additional pipes or conduits placed within the bag (see column 3, lines 24-27, of Cullen ('744) and column 3, lines 34-37, of Cullen ('910)).

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cullen (5,345,744), Cullen (5,426,910) and Meyer (5,269,829) as applied to claims 1, 5, 6 and 9 above, and further in view of Taylor (4,230,676). The Cullen patents do not teach the feature of forcing

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air into the media and monitoring the moisture content therein. This is shown to be conventional by Taylor where decomposition can be controlled by forcing air into the material and monitoring the moisture content so as to control the decomposition of the material. While Taylor is not directed to the drying of the material, this is considered to be a corresponding treatment process to decomposing material. The only difference lies in the amount of moisture added to the material. In light of Taylor's showing, it would have been obvious to the skilled artisan at the time of the invention to have modified either one of Cullen's teachings by further monitoring the moisture content of the material using the concepts taught by Taylor so as to control the treatment of the material.

## **INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(703) 308-1870**. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday. The examiner's supervisor, Mr. Allen Ostrager, can be reached at **(703) 308-3136**.

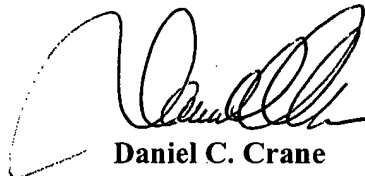
Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1148**.



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Documents related to the instant application may be submitted directly to Group 3700 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3725 Facsimile Center number is (703) 305-3579.

DCCrane  
September 30, 2003

A handwritten signature in black ink, appearing to read 'D. Crane', with a large, stylized initial 'D'.

**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725

<b>Notice of References Cited</b>	Application/Control No. 08/135,046	Applicant(s)/Patent Under Reexamination GARVIN ET AL.	
	Examiner Daniel C Crane	Art Unit 3725	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-3,427,790	02-1969	Flittie	56/1
	B	US-3,509,637	05-1970	Collier	34/443
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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